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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE460

Takes of Marine Mammals Incidental to Specified Activities; Sand Quality Study Activities at the Children's Pool Beach, La Jolla, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an Incidental Harassment Authorization (IHA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an IHA to the City of San Diego to take small numbers of marine mammals, by Level B harassment, incidental to the conduct of sand quality study activities at the Children's Pool Beach in La Jolla, California.

DATES: Effective June 1, 2016 through May 30, 2017.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*), direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified

geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by

causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 14, 2015, NMFS received an application from the City of San Diego, Transportation & Storm Water Department, Storm Water Division, requesting an IHA for the taking of marine mammals incidental to the conduct of sand quality study activities. NMFS determined that the IHA application was adequate and complete on February 25, 2016. NMFS published a notice making preliminary determinations and proposing to issue an IHA on April 4, 2016 (81 FR 19137). The notice initiated a 30 day comment period.

The City of San Diego will undertake the proposed sand quality sampling activities between June 1, 2016 and December 14, 2016 at the Children's Pool Beach in La Jolla, California. Visual stimuli due to the presence of technicians on the beach and their sand sampling collection activities during the study have the potential to result in the take of marine mammals through behavioral disturbance. The IHA authorizes the take, by Level B (behavioral) harassment, of small numbers of Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) incidental to sand quality sampling activities of the Children's Pool Beach at La Jolla, CA. Additional information on the sand quality sampling activities at the Children's Pool Beach is contained in the IHA application, which is available at the NMFS web site:

<http://www.nmfs.noaa.gov/pr/permits/incidental>.

Description of the Specified Activity

A detailed description of the sand sampling project is provided in the *Federal Register* notice for the proposed IHA (81 FR 19137, April 4, 2016). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of preliminary determinations and proposed IHA for the City of San Diego's sand quality study activities was published in the **Federal Register** on April 4, 2016 (81 FR 19137). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The comments are posted online at: <http://www.nmfs.noaa.gov/pr/permits/incidental/construction.html>. Following are the substantive comments and NMFS's responses:

Comment 1: The Commission concurs with NMFS's preliminary findings and recommends that NMFS issue the requested IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Response: NMFS concurs with the Commission's recommendation and has issued the IHA to the City of San Diego.

Description of Marine Mammals in the Specified Geographic Area of the Proposed Specified Activity

Information on marine mammal species for which take is authorized is included below. Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the NMFS Marine Mammal Stock Assessment Reports, which are available online at:

<http://www.nmfs.noaa.gov/pr/sars/>.

Three species of pinnipeds are known to occur in the Children's Pool proposed action area and off the Pacific coastline (see Table 1 below). Pacific harbor seals are the most common species likely to be found within the immediate vicinity of the activity area. California sea lions and northern elephant seals may also be found within the immediate vicinity of the activity area, but are more rare occurrences than harbor seals. Northern fur seals and Guadalupe fur seals are even more rarely observed at this location (Northern and Guadalupe fur seals have been seen observed at nearby beaches on rare occasions, and a northern fur seal was observed hauled out at La Jolla Cove, which is less than a mile from Children's Pool, per a personal communication with Dr. Hanan [February 4, 2016], a scientist with extensive knowledge of the area and the species occurring there). Fur seals are not known to haul out in such urban mainland beaches, and their presence would likely be attributed to sickness or injury if they were observed in this location. Therefore, only three species are considered to be potentially exposed to effects of the proposed sand sampling activities, as sand sampling activities will not be conducted if fur seals were present and coordination with the stranding network would commence. A variety of other marine mammal species have on occasion been reported in the coastal waters off southern California. However, none of these species have been reported to occur in the immediate proposed action area of the Children's Pool Beach. Therefore, NMFS does not expect, and does not propose to authorize, incidental take of marine mammal species other than Pacific harbor seals, California sea lions, and northern elephant seals from the proposed specified activities. Table 1 below provides

information on these marine mammal species, their habitat, and conservation status in the nearshore area of the general region of the proposed project area.

Table 1. The habitat, abundance, and conservation status of Pacific harbor seals, California sea lions, and northern elephant seals.

Species	Habitat	Occurrence	Range	Best Population Estimate (Minimum) ¹	ESA ²	MMPA ³
Pacific harbor seal (<i>Phoca vitulina richardii</i>)	Coastal	Common	Coastal temperate to polar regions in Northern Hemisphere	30,968 (27,348) – California stock	NL	NC
Northern elephant seal (<i>Mirounga angustirostris</i>)	Coastal, pelagic when not migrating	Common	Eastern and Central North Pacific – Alaska to Mexico	179,000 (81,368) – California breeding stock	NL	NC
California sea lion (<i>Zalophus californianus</i>)	Coastal, shelf	Common	Eastern North Pacific Ocean – Alaska to Mexico	296,750 (153,337) – U.S. stock	NL	NC

NA = Not available or not assessed.

¹ NMFS Marine Mammal Stock Assessment Reports

² U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, and NL = Not listed.

³ U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, and NC = Not classified.

A detailed description of the of the species likely to be affected by the sand sampling project, including introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (81 FR 19137; April 4, 2016); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that Federal Register notice for these descriptions. Please also refer to NMFS' website (www.nmfs.noaa.gov/pr/species/mammals/) for generalized species accounts.

Potential Effects of the Specified Activity on Marine Mammals

The effects of visual stimuli from the planned project have the potential to result in behavioral harassment of marine mammals in the project area. The Federal Register notice for the proposed IHA (81 FR 19137; April 4, 2016) included a discussion of the effects of visual stimuli on marine mammals, therefore that information is not repeated here; please refer to the **Federal Register** notice (81 FR 19137; April 4, 2016) for that information. No instances of hearing injury, serious injury, or mortality are expected as a result of the sand sampling activities.

Anticipated Effects on Marine Mammal Habitat

The primary anticipated adverse impact from the planned project upon habitat consists of the removal of sand from the beach. This change is minor, temporary, and limited in duration to the period of the sand sampling activities. Although sand will be collected from the beach, the total volume removed over the course of the study is estimated to be less than one cubic foot. Therefore, we do not anticipate impacts to marine mammal habitat. The Federal Register notice for the proposed IHA (81 FR 19137; April 4, 2016) included a discussion of the effects of the sand sampling activities on marine mammal habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (81 FR 19137; April 4, 2016) for that information.

Mitigation Measures

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to

rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The planned activities include a variety of measures to minimize potential impacts on marine mammals, including:

Prohibition of Sand Sampling During Pupping Season

Sand sampling activities shall be prohibited during the Pacific harbor seal pupping season (December 15th to May 15th), and for an additional two weeks thereafter to accommodate lactation and weaning of late season pups. Thus, sand quality study activities shall be prohibited until June 1, 2016 and will be required to end before December 15, 2016.

Limiting Activity to Daylight Hours

Sand sampling activities shall be conducted during daylight hours only. As Protected Species Observers (PSOs) will be required to monitor the sand sampling activities (see discussion below), conducting the sampling events during daylight hours with adequate visibility will allow observers to adequately observe and record activities.

Daily Sand Sampling Timing

Sand sampling activities shall be scheduled, to the maximum extent practicable, during the daily period of lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m., as harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3 p.m. to 6 p.m. However, sand sampling activities may be extended from 7 a.m. to 7 p.m. to help assure that the project can be completed at a time with low numbers of seals hauled out.

Avoidance/Minimization of Interaction with Pinnipeds

As stated in the FR notice for the proposed IHA (81 FR 19137; April 4, 2016), per Dr. Doyle Hanan, ongoing observations of harbor seals at Children's Pool have indicated a habituation to the presence of people to some degree and therefore, generally show signs of disturbance when people are very close to them on the beach (generally less than two to three meters). Sand sampling activities will be conducted such that humans remain at least three meters from hauled out pinnipeds at all times. While the study calls for taking samples along transects, there is enough flexibility to allow for variation from the transect line to collect samples and still allow for minimizing approach to pinnipeds on the beach. Therefore, hauled out pinnipeds will be minimized or avoided, and efforts will be made to avoid disturbing/alerting/flushing them.

Protected Species Observers

Trained PSOs will be used to detect, document, and minimize impacts to marine mammals. More information about this measure is contained in the "Proposed Monitoring" section (below).

Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the activity.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

- (1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
- (2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to visual or auditory stimuli associated with the proposed sand quality study, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
- (3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to visual or auditory stimuli associated with the proposed sand quality study, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
- (4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to visual or auditory stimuli associated with the proposed sand quality study, or other activities expected to result in the take of marine

mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance of minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation – an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on NMFS's evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) require that requests for ITAs include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

- (1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;
- (2) An increase in our understanding of how many marine mammals are likely to be exposed to visual or auditory stimuli associated with the proposed sand quality study that we associate with specific adverse effects, such as behavioral harassment;
- (3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
 - Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict distance from source, and other pertinent information);
 - Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict distance from the source, and other pertinent information);
 - Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;
- (4) An increased knowledge of the affected species;
- (5) An increase in our understanding of the effectiveness of certain mitigation

and monitoring measures; and

(6) An increase in our level of knowledge regarding the overall health of the monitored species, particularly in light of recent local UMEs and observations of malnutrition increases in the area.

Monitoring

The City of San Diego has developed a monitoring plan based on discussions between the City of San Diego and NMFS, as well as review of past IHAs granted to the City of San Diego. The plan was included as an Appendix to our Environmental Assessment (EA) for issuance of the IHA for the sand quality study activities (see National Environmental Policy Act section below). No changes to the monitoring plan were made based on comments received during the public review period. The monitoring plan has also been included as an attachment to the IHA issued to the City of San Diego. The City of San Diego will ensure that the requirements of the IHA and monitoring plan are explained to all workers associated with sand quality study activities at Children's Pool Beach, and a copy of the IHA will be posted at a prominent location at the site of the activities.

The monitoring plan involves PSOs surveying and conducting hourly visual counts beginning prior to sand sampling activities (beginning at least 30 minutes prior to sampling activities), monitoring during sampling activities, and post-sand sampling monitoring (continuing for at least 30 minutes after sand sampling activities have ended). During each sample collection event, the PSO will conduct continuous monitoring from a vantage point along the seawall (weather permitting) or along the bluff above the beach, such that the full study area is in view. During the planned sand sampling activities,

monitoring shall assess behavior and potential behavioral responses to noise and visual stimuli due to the proposed activities. As noted above, if northern fur seals or Guadalupe fur seals are observed prior to commencement of activities, the activities will not occur and coordination with the stranding network will be initiated.

Counts will be performed by species for three zones: pinnipeds hauled out on the sandy beach area, pinnipeds observed in the water within approximately 30 meters of the beach, and pinnipeds hauled out on the reef/rocks just off the beach (including Seal Rock). Total counts, counts of juveniles (yearlings and pups), and counts of males/females (when possible) will be recorded. In addition to counts, continuous behavioral monitoring will be conducted for the duration of the sampling event to document any behavioral responses to visual (or other) stimuli, as noted in Table 2 below. When responses are observed, the type of take (i.e., alert and flush, movement of more than one meter, or change in direction of movement) and the assumed cause (whether related to sample collection activities or not) will be noted by species. Photographs and/or video will be taken to document these responses.

Table 2. Seal response to disturbance.

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. Alerts will be recorded, but not counted as a 'take'.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach including changing direction of travel, or movement along the beach from a resting position. These movements will be recorded and counted as a 'take'.
3	Flush	All retreats (flushes) to the water. Flushing into the water will be recorded and counted as a 'take'.

Additional parameters will be recorded during the first and last count of each sampling event including Beaufort sea state; atmospheric conditions; cloud cover;

visibility conditions; air and water temperature; tide height; and number of public visitors present by location at Children's Pool.

Field observations will be documented on Field Monitoring Forms, and all observations and associated data, including daily monitoring reports, will be maintained on City of San Diego computers. A report summarizing mitigation and monitoring for the duration of the Children's Pool Beach sand quality study will be prepared and submitted by the City of San Diego to NMFS following completion of sand sampling activities for the 2016 sampling season.

The following marine mammal monitoring and reporting shall be performed for the proposed action:

- (1) The PSO shall be selected prior to sand sampling activities.
- (2) The NMFS-approved PSO shall attend the project site prior to, during, and after sand sampling activities cease each day that the sand sampling activities occur.
- (3) The PSO shall search for marine mammals within the Children's Pool area.
- (4) The PSO shall be present during sand sampling activities to observe for the presence of marine mammals in the vicinity of the specified activity. All such activity will occur during daylight hours (*i.e.*, 30 minutes after sunrise and 30 minutes before sunset). If inclement weather limits visibility within the area of effect, the PSO will perform visual scans to the extent conditions allow.
- (5) If marine mammals are sighted by the PSO, the PSO shall record the number of marine mammals and the duration of their presence while the sand sampling activity is occurring. The PSO will also note whether the marine mammals appeared to

respond to the noise/visual stimuli and, if so, the nature of that response. The PSO shall record the following information: date and time of initial sighting, tidal stage, weather conditions, Beaufort sea state, species, behavior (activity, group cohesiveness, direction and speed of travel, etc.), number, group composition, distance between sampling personnel and pinniped(s), number of animals impacted, sampling activities occurring at time of sighting (walking, taking surface sample, or pounding core sampler), and monitoring and mitigation measures implemented (or not implemented). The observations will be reported to NMFS.

(6) To avoid takes of northern fur seals and Guadalupe fur seals, if fur seals are observed to be hauled out on the beach, or in the water/rocks at the Children's Pool Beach prior to the initiation of sand collection activities, sand sampling activities will not commence. PSOs will alert the stranding network, as the occurrence of these species would typically indicate a sick/injured animal. Recommendations of the stranding coordinator will be followed, which may include a 24-hour or 48-hour waiting and observation period, and sand sampling will not commence until the animal(s) either vacate the area on its own, or is collected by the stranding network

(7) A final report will be submitted summarizing all effects from sand sampling activities and marine mammal monitoring during the time of the authorization.

A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

- Time of observer arrival on site;
- Time of the commencement of sand sampling activities;
- Distances to all marine mammals relative to the stimuli;

- For harbor seal, northern elephant seal, and California sea lion observations, notes on behavior during sand sampling activity, as described above, and on the number and distribution observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, northern elephant seals, and California sea lions, the time and duration of each animal's presence in the project vicinity; the number of animals observed; the behavior of each animal, including any response to sand sampling activities;
- Time of the cessation of sand sampling activities; and
- Time of observer departure from site.

All monitoring data collected during sand sampling events will be included in the biological monitoring notes to be submitted. A final report summarizing the sand sampling monitoring and any general trends observed will also be submitted to NMFS within 90 days after monitoring has ended during the period of the sand quality study or 45 days prior to the date by which any subsequent IHA is requested by the City of San Diego, whichever comes first.

Reporting

A draft final report must be submitted to NMFS within 90 days after the conclusion of the final sand sampling activities of the Children's Pool Beach. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, etc.], tidal stage, weather conditions, Beaufort sea state and wind force, associated sand sampling activities). A final report

must be submitted within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

While the IHA does not authorize injury (*i.e.*, Level A harassment), serious injury, or mortality, should the applicant, contractor, monitor or any other individual associated with the sand quality study observe an injured or dead marine mammal, the incident (regardless of cause) will immediately be reported to NMFS stranding coordinator. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured, or if any fur seals are observed) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1-800-541-7235. Sea World shall also be notified if a dead stranded pinniped is found so that a necropsy can be performed. In all cases, NMFS stranding coordinator shall be notified as well, but for immediate response purposes, Sea World shall be contacted first.

Reporting Prohibited Take - In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, the City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- The type of activity involved;
- Description of the circumstances during and leading up to the incident;
- Water depth; environmental conditions (*e.g.*, wind speed and direction,

Beaufort sea state, cloud cover, and visibility);

- Description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved;

- The fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the City of San Diego to determine the action necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume its activities until notified by NMFS via letter, e-mail, or telephone.

Reporting an Injured or Dead Marine Mammal with an Unknown Cause of Death

- In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in the next paragraph), the City of San Diego will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report must include the same information identified above. Activities may continue while NMFS reviews the

circumstances of the incident. NMFS will work with the City of San Diego to determine whether modification of the activities is appropriate.

Reporting an Injured or Dead Marine Mammal Not Related to the Activities - In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of San Diego shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS , and the West Coast Regional Stranding Coordinator within 24 hours of the discovery. The City of San Diego shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Monitoring Results from Previously Authorized Activities

2013 to 2014

Hanan & Associates, Inc., on behalf of the City of San Diego, conducted marine mammal and in-air sound monitoring at six locations during demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California from June 3, 2013 to February 12, 2014. Demolition and construction activities began on July 10, 2013 and were halted for the Pacific harbor seal pupping season (December 15, 2013 to May 30, 2014). During 115 days of visual and acoustic observations, Hanan & Associates counted a total of 61,631 Pacific harbor seals and 26,037 people. During the 2013 demolition and construction activities, Hanan & Associates observed a total of

5,793 takes by Level B harassment (*i.e.*, movements, and flushes) that could be attributed to demolition and construction activities (1,371 takes), the general public (3,536 takes), and other sources (886 takes). As of April 15, 2014, at least 60 harbor seal pups (including 2 still births) have been born at the Children's Pool and there has been no indication of abandonment. In addition to the Pacific harbor seal sightings, PSOs recorded three sightings of California sea lions (1 juvenile, 3 adult), and 2 northern elephant seals (both juveniles) at the Children's Pool.

2014 to 2015

Hanan & Associates, Inc., on behalf of the City of San Diego, conducted marine mammal monitoring at seven locations during demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California from August 6, 2014 to March 15, 2015. Construction activities began on August 6, 2014 and were halted for the Pacific harbor seal pupping season (December 15, 2014 to May 30, 2015). During 127 days of visual and acoustic observations, Hanan & Associates counted a total of 63,598 Pacific harbor seals and 27,844 people. During the 2014 demolition and construction activities, Hanan & Associates observed a total of 6,787 takes by Level B harassment (*i.e.*, movements, and flushes) that could be attributed to demolition and construction activities (1,790 takes), the general public (3,914 takes), and other sources (1,083 takes). As of March 13, 2015, at least 60 harbor seal pups (including 6 still or premature births) have been born at the Children's Pool and there has been no indication of abandonment. In addition to the Pacific harbor seal sightings, 366 sightings of California sea lions (93 at Children's Pool beach; others were at Seal Rock, South Casa Beach, and on the reef), and 1 northern elephant seal (juvenile). One dead adult and one dead juvenile California sea

lion were sighted on the Children's Pool beach after the start of the beach closure and after the construction activities stopped for the pupping season. These strandings were reported to NMFS.

More information on the monitoring results from the City of San Diego's previous demolition and construction activities at the La Jolla Children's Pool Lifeguard Station can be found in the final monitoring reports. The 2013 to 2014 and 2014 to 2015 monitoring reports can be found online at:

<http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm#childrenspool>

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

The City of San Diego and NMFS anticipate takes of Pacific harbor seals, California sea lions, and northern elephant seals by Level B (behavioral) harassment only incidental to visual disturbance associated with the sand quality study sand sampling activities at the Children's Pool Beach. No takes by injury (Level A harassment), serious injury, or mortality are expected. NMFS will consider pinnipeds behaviorally reacting to the sand sampling activities by flushing into the water, moving more than twice the animal's body length but not into the water; becoming alert and moving more than twice

its body length; and changing direction of current movements by individuals as behavioral criteria for take by Level B harassment.

With planned sand sampling activities scheduled to begin in June 2016, the City of San Diego expects a range of harbor seals to be present daily during June with a maximum of up to 190 individuals and a seasonal decline through November to about 0 to 50 harbor seals present daily. As not all of the sampling activities have been planned, and there is uncertainty regarding the timing and number of all activities, we have assumed the maximum number of authorized sampling activities (16) occurring during the maximum haul out month (June) in order to estimate take numbers. If all of the estimated harbor seals present are taken by incidental harassment each day, there could be a maximum of 3,040 incidences of take over the entire duration of the activities. An unknown portion of the incidental takes will be from repeated exposures as harbor seals leave and return to the Children's Pool area.

Very few California sea lions or northern elephant seals are ever observed at the Children's Pool Beach. As noted above, Children's Pool is almost exclusively a harbor seal haul-out site and on rare occasions, one or two California sea lions or a single juvenile elephant seal have been observed on the sand or rocks at, or near, Children's Pool. However, as noted above, an UME has been in place since 2013 for California sea lions. According to the NMFS West Coast Region, California sea lion strandings in January-May of 2015 were over 10 times the average stranding level for the same five-month period during 2004-2012. The City of San Diego has requested take for these species due to their potential occurrence at this location and past monitoring experience at this location. As the previous IHA authorized take of two individual sea lions

incidental to construction activities at Children’s Pool, and numbers of sea lion sightings have been over 10 times the average, we estimate that up to 20 individuals may be incidentally taken by Level B harassment equating to 320 exposures (conservatively assuming 20 X 16 sampling events). As only one or two northern elephant seals are known to occur rarely at Children’s Pool Beach, it was conservatively estimated that 16 individuals would be exposed to Level B harassment for a total of 16 takes (assuming one present for each of the 16 sampling events). Therefore, NMFS authorizes the following numbers of incidental takes (*i.e.*, Level B harassment): 3,040 Pacific harbor seals (600 individuals), 320 California sea lions (20 individuals), and 16 northern elephant seals (16 individuals). More information on the number of takes authorized, and the approximate percentage of the stock for the three species in the proposed action area can be found in Table 3 (below).

Table 3. Summary of the authorized incidental take by Level B harassment of pinnipeds for the City of San Diego’s proposed sand quality study activities generating visual and auditory stimuli at the Children’s Pool Beach in La Jolla, CA.

Species	Take Authorization (Number of Exposures)	Estimated Number of Individuals Taken	Abundance	Approximate Percentage of Estimated Stock (Takes Authorized/ Population)	Population Trend
Pacific harbor seal	3,040	600	30,968 – California stock	10	Increased in California 1981 to 2004
California sea lion	320	20	296,750 – U.S. stock	0.1	Increasing
Northern elephant seal	16	16	179,000 – California breeding stock	<0.01	Increasing 3.8% annually since 1988

Analysis and Determinations

Negligible Impact

Negligible impact is “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival” (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

In making a negligible impact determination, NMFS evaluated factors such as:

- (1) The number of anticipated injuries, serious injuries, or mortalities;
- (2) The number, nature, and intensity, and duration of Level B harassment; and
- (3) The context in which the takes occur (*i.e.*, impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- (4) The status of the stock or species of marine mammals (*i.e.*, depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- (5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

Behavioral disturbance may potentially occur incidental to the visual presence of humans and sand sampling activities; however, pinnipeds at this site have likely adapted or become acclimated to human presence to some degree at this site. The City of San Diego has designated Children's Pool Beach as a shared use beach. Many activities currently take place at Children's Pool Beach and the surrounding shoreline areas including swimming, SCUBA diving, surfing, kayaking, tide pooling, and nature watching. These "urbanized" harbor seals do not exhibit sensitivity at a level similar to that noted in harbor seals in some other regions affected by human disturbance (Allen *et al.*, 1984; Suryan and Harvey, 1999; Henry and Hammil, 2001; Johnson and Acevedo-Gutierrez, 2007; Jansen *et al.*, 2006; Hanan & Associates, 2011). For example, during monitoring for construction for the Children's Pool Lifeguard Station, equipment noise and visual cues at times have caused seals to alert/flush, while at other times the same stimuli have produced no reaction (City of San Diego, 2015). Per the City of San Diego (2015), "[a]t the individual level, a newly arrived seal (which swam in from another area) may not have habituated to humans and noise as have seals that have been onsite for a while. These recent arrivals may alert to visual stimuli, perhaps flushing to the water. But after a few days using this beach during the non-pupping season (when humans are also present on the beach), we would expect them to habituate and generally not react to humans unless very close to them (Hanan 2004, Hanan & Associates 2011, Hanan and Hanan 2014)." Therefore, there is a high likelihood that many of the harbor seals present during the planned sand sampling activities would not be flushed off of the beach or rocks, as pinnipeds at this site are conditioned to human presence to some degree (Hanan,

2004; Hanan & Associates, 2011) (see

<http://www.youtube.com/watch?v=4IRUYVTULsg>), and it is anticipated that takes would likely be of lesser intensity than would be expected at other locations.

No injuries (Level A harassment), serious injuries, or mortalities are anticipated to occur as a result of the City of San Diego's sand sampling activities, and none are proposed for authorization by NMFS. The planned activities are not expected to result in the alteration of reproductive behaviors or parenting because of the moratorium on access to the beach during the pupping season, and the potentially affected species would be subjected to only temporary and minor behavioral impacts.

As discussed in detail above, the project scheduling avoids sensitive life stages for Pacific harbor seals. Project activities will commence June 1 and end by December 15. The commencement date occurs after the end of the pupping season, affords additional time to accommodate lactation and weaning of late-season pups, and takes into account periods of lowest haul-out occurrence. The end date falls approximately two weeks prior to January 1, the time after which most births occur, providing protection for pregnant and nursing harbor seals that may give birth before January 1.

Table 3 of this document outlines the number of Level B harassment takes that are anticipated as a result of these proposed activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see "Potential Effects on Marine Mammals" section above) in this notice, this activity is not expected to impact rates of annual recruitment or survival for the affected species or stock (*i.e.*, California stock of Pacific harbor seals, U.S. stock of California sea lions, and California breeding

stock of northern elephant seals), particularly given the mitigation, monitoring, and reporting measures that will be implemented to minimize impacts to marine mammals.

The Children's Pool is one of the three known haul-out sites for Pacific harbor seal in San Diego County and the only rookery in San Diego County and the only mainland rookery on the U.S. west coast for this species between the border of Mexico and Point Mugu in Ventura County, CA. For the other marine mammal species that may occur within the action area (*i.e.*, California sea lions and northern elephant seals), there are no known designated or important feeding and/or reproductive areas at the project site. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.*, 24 hour cycle). Behavioral reactions (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). However, Pacific harbor seals have been hauling-out at Children's Pool during the year for many years (including during pupping season and while females are pregnant) while being exposed to anthropogenic sound sources such as vehicle traffic, human voices, etc. and other stimuli from human presence. The Pacific harbor seals have repeatedly hauled-out to pup over many years and the NMFS Stock Assessment Reports for this stock have shown that the population is increasing and is considered stable (NMFS, 2014). Additionally, the proposed sand sampling activities would generally not take place on subsequent days for long durations, as a maximum of up to 16 sampling events (lasting approximately 4 hours each) are planned for the sand quality study, which would take place over the six-months of the study.

None of the potentially affected marine mammal species under NMFS jurisdiction in the action area (Pacific harbor seals, California sea lions, and northern elephant seals) are listed as threatened or endangered under the ESA. To protect these animals (and other marine mammals in the action area), the City of San Diego shall schedule sand sampling activities during the daily period of lowest haul-out occurrence; limit activities to the hours of daylight; ensuring that technicians performing sand sampling remain at least three meters from any hauled out pinnipeds; use PSOs, prohibit sand sampling activities in the unlikely event that fur seals are present, and prohibit sand sampling activities during harbor seal pupping season.

Although behavioral modifications, including temporarily vacating the area during the proposed sand sampling activities, may be made by these species, the sand quality sampling activities will be fairly sporadic and will be of relatively short duration. NMFS believes that the time period of the sand sampling activities, the requirement to implement mitigation measures (*e.g.*, prohibiting sand sampling activities during pupping season, scheduling operations to periods of the lowest haul-out occurrence, and ensuring a buffer of at least three meters between sampling technicians and hauled out pinnipeds), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of monitoring and mitigation measures, NMFS finds that the total marine mammal take from the City of San Diego's activities would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that three species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. It is conservatively estimated that the instances of take by Level B harassment (amounting to 3,040 for Pacific harbor seals, 320 for California sea lions, and 16 for northern elephant seals) would be approximately 10%, 0.1%, and less than 0.01% of the respective California, U.S., and California breeding stocks. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 3 of this document.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS determined that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks. See Table 3 for the authorized take numbers of marine mammals.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are not relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for subsistence purposes.

Endangered Species Act

NMFS (Permits and Conservation Division) has determined that an ESA section 7 consultation for the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity is not necessary for the Guadalupe fur seal. This species is rare at Children's Pool Beach. Due to the fact that sightings have occurred in the area, and due to the declaration of a UME for this species in the area, ESA consultation was considered. However, it was determined that the sand sampling activities would have no potential to affect the Guadalupe fur seal because these activities would not occur if this species were present at Children's Pool Beach. No other ESA-listed species are expected to occur in the proposed project area.

National Environmental Policy Act

To meet NMFS's National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to the City of San Diego, NMFS prepared an Environmental Assessment (EA) titled *Draft Environmental Assessment of the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Sand Quality Study Activities at the Children's Pool Beach in La Jolla, California* to comply with the Council of Environmental Quality (CEQ) regulations and NOAA Administrative Order (NAO) 216-6. NMFS prepared and signed a Finding of No Significant Impact (FONSI) determining that preparation of an Environmental Impact Statement (EIS) was not required. The FONSI was signed on May 26, 2016 prior to the issuance of the IHA for the City of San Diego's sand quality study activities from June 2016 to June 2017. A copy of the EA and FONSI is available upon request (see ADDRESSES).

Authorization

NMFS has issued an IHA to the City of San Diego for conducting sand quality study activities at the Children's Pool Beach in La Jolla, CA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 27, 2016

Donna S. Wieting, Director,

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National Marine Fisheries Service.

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